



# Commonwealth of Kentucky

## MASTER AGREEMENT

### IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

**Doc Description:** Asphalt Seals D4

**Doc ID No:** MA 605 1600000948 1

**Proc Folder:** 4262015

**Procurement Type:** Standard Services

**Record Date:**

**Effective Date:** 06/01/2016

**Expiration Date:** 05/31/2017

**Issued By:** AMANDA LEWIS

**Cited Authority:** FAP111-35-00-S

**Telephone:**

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R** J H RUDOLPH AND CO INC  
1251 N STOCKWELL RD  
EVANSVILLE IN 47715  
US

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Crushed Aggregate	21	0.00	TON	65.00000	0.00	0.00

#### Extended Description

Vendor Rep: Chad Hubert

Vendor Phone: 812-476-4921

Vendor Email: chadhubert@jhrudolph.com

See terms and conditions.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Polymer Modified Emulsion Asphalt for Chip Seals	21	0.00	TON	830.00000	0.00	0.00

#### Extended Description

See terms and conditions.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	Polymer Modified Emulsion Asphalt for Scrub Seals	21	0.00	TON	1,500.00000	0.00	0.00

#### Extended Description

See terms and conditions.

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Polymer Modified Emulsified Asphalt for Fog Seals	21	0.00	TON	775.00000	0.00	0.00

#### Extended Description

See terms and conditions.

**Total Order Amount:** 0.00

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There is the potential that federal funds could be used on orders against the resulting master agreement contract. Therefore, FHWA 1273 requirements (with the exception of Davis Bacon) and Buy America requirement section 106.04 from the 2012 Standard Specifications for Road and Bridge Construction shall be required on this solicitation and the resulting award/contract.

## Section 1—Specifications - Service

### 1.00—Specifications of Commodity and/or Service Requirements

From this solicitation, the Commonwealth intends to award a Master Agreement for furnishing and applying Asphalt Chip Seals, Asphalt Scrub Seals, and Asphalt Fog Seals.

Except as provided herein, conform to all requirements of the Transportation Cabinet, Department of Highways' 2012 Standard Specifications for Road and Bridge Construction. Section references are to the Standard Specifications.

The Standard Specifications can be found at:

<http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>

The following emulsions are required with no substitutions allowed:

Chip Seals	-	CRS-2P
Scrub Seals	-	CMS-1P or CMS-1PC
Fog Seals	-	CSS-1H or SS-1H

#### – Asphalt Chip Seals

**DESCRIPTION** Construct an asphalt chip seal consisting of one or more applications each of asphalt material and cover aggregate.

#### MATERIAL AND EQUIPMENT

**Asphalt Material** Furnish undiluted CRS-2P polymer modified emulsion that meets requirements Section 806.05

**Aggregate** Provide a Type D aggregate according to Section 403.03.03. It shall be washed, number 8 or 9M aggregate conforming to Section 805.05.

**Equipment** Provide, and keep on the project at all times, an accurate thermometer, hand brooms, and other small tools and equipment essential for completion of the work.

**The asphalt distributor** for the application of the emulsion shall have full circulation spray bar that is adjustable to at least 16 feet wide in 2 feet increments and capable of heating and circulating the emulsion simultaneously, conforming to subsection 406.02.05. It must have computerized rate control for adjusting and controlling the application from the cab within 0.01 gallons per square yard increments. The distributor shall also be equipped with a volume measuring device and a thermometer for measuring the emulsion temperature in the tank.

**The aggregate spreader** shall be a continuous mechanical feed, self-propelled aggregate

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spreader with front discharge. Ensure the spreader can evenly distribute the aggregate from the transporting vehicle directly onto the fresh asphalt material in smooth, uniform layers, independent of the forward speed. Ensure that the spreader is capable of being filled and moved without discharging aggregate.

**The roller** shall be a Pneumatic tire roller weighing at least 5 tons.

**The power broom** shall be a mechanically powered kick-broom or vacuum type broom.

## CONSTRUCTION

**Weather Limitations** Application of chip seal shall only be constructed when ambient temperature is 50 degrees F and rising. Do not construct when the ambient temperature within the preceding 24 hours has been 35 degrees F or lower, except with the Engineer's written permission. Do not proceed with construction if rain is expected in a minimum period of 24 hours, nor when rain is impending within 2 hours after completion of the chip seal. If an unexpected shower arises during operations, the asphalt distributor should be shut off immediately and placement of aggregate continued until all asphalt has been covered.

**Preparation of Mixture** Submit a complete mix design a minimum of 14 days prior to construction. Mix design shall be prepared by an approved laboratory, to verify the compatibility of the aggregate, asphalt emulsion and other additives. Perform the mix design with the same materials that will be used on the project.

**Surface Preparation** Prior to operation, the contractor shall remove all existing thermoplastic striping, thermoplastic legends, and raised markers within application limits. All surfaces intended for application shall be thoroughly cleaned of all vegetation, loose material, dirt, or other objectionable material immediately before application of emulsion using a mechanical sweeper and wire hand brooms, when necessary. Clean the edges of the surface providing a full and uniformly clean width of roadway. Where mud or earth exists, remove it in advance and allow surface to thoroughly dry before applying emulsion. Mowing or removal of shoulder vegetation and or brush may be necessary for proper application.

If cracks cannot be adequately filled by emulsion, fill with proper asphalt material or hot pour joint sealer conforming to subsection 807.03.01. If applicable, apply cover aggregate before applying chip seal application.

## Application Rates of Materials

Properties	Minimum	Maximum
Application rate of emulsion, gallons/sq. yard*	0.22	0.35
Emulsion temperature, F	110	185
Application rate of aggregate, lb./sy*	16	22

\*Engineer may adjust application rates due to existing conditions

## APPLICATION

**Application of Emulsion** Heat and maintain emulsion between 110 and 185 degrees F during application. Polymer modified emulsion shall be applied when air temperature is at least 50 degrees F and rising and a minimum surface temperature of 70 degrees F.

Emulsion shall be applied using a pressure distributor in a uniform, continuous quantity at specified rates.

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Keep the nozzles of the spray bar clean at all times. Immediately make any streaked areas uniform by use of a hand hose equipped with a nozzle.

Do not apply the asphalt material farther in advance of the spreading of the aggregate than can be covered directly by the aggregate immediately available at the site of work.

When the chip seal treatment is constructed in half-widths, provide complete coverage by overlapping the 2 applications approximately 4 inches along centerline.

Prevent spotting or discoloring curbs, headwalls, and other structures. When such discolorations occur, remove them at no expense to KYTC.

Make joints utilizing an approved method.

**Aggregate** Aggregate cover material shall be cleaned and washed to remove dirt and dust, ensuring appropriate adhesion with emulsion. Due to this process, aggregate may be damp during application. Prior to breaking of the emulsion, aggregate shall be continuously and evenly spread with the proper equipment at the specified rates. Spreading equipment shall not contact the asphalt material before it is covered with aggregate. Precautions should be taken not to exceed the designated rate by more than 5 percent. Use hand brooms to correct any irregularities.

**Rolling** A self-propelled pneumatic tire roller shall be used for the required rolling of the aggregate. This shall be done immediately following the spreading of aggregate. Operate the rollers parallel to the centerline in a manner preventing the dislodgment of newly applied aggregate. Rolling should proceed from the outer edge to the center, with each pass overlapping the previous by one-half. Cover the entire surface with at least 3 passes or more when the engineer directs.

**Sweeping** Power sweep/vacuum the completed application to remove all excess aggregate after the asphalt material has cured sufficiently. Sweeping/vacuuming must be completed prior to any striping and/or before the end of the application day. Little to no aggregate shall be remaining on entrance/exit aprons of intersecting crossroads and driveways. A second sweeping may be required following the initial application day. Prior to applying a fog seal or other of surface treatment over the chip seal, it may be opened to traffic for an amount of time specified in the contract. This may be necessary to ensure maximum aggregate retention.

## MEASUREMENT

When an authorized adjustment is made, KYTC will measure quantities up to 5 percent in excess of the designated application rate for payment. KYTC will not measure quantities exceeding the designated application rate by more than 5 percent for payment.

**Asphalt Material.** KYTC will measure the quantity in tons according to **Section 109**.

**Aggregate.** KYTC will measure the quantity in tons according to **Section 109**.

## PAYMENT

KYTC will make payment for the completed and accepted quantities under the following:

<u>Pay Item</u>	<u>Pay Unit</u>
Polymer Modified Emulsified Asphalt for Chip Seals	Ton
Crushed Aggregate	Ton

KYTC will consider payment as full compensation for all work required under this section.

## 1.02– Asphalt Scrub Seals

**DESCRIPTION** This work consists of placing a polymer modified asphalt emulsion which is scrubbed with a broom to fill and seal cracks and covered with a layer of aggregate.

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## MATERIAL AND EQUIPMENT

**Asphalt Material** Furnish undiluted CMS-1P or CMS-1PC polymer modified emulsion that meets requirements of attached tables.

**Aggregate** Provide a Type D aggregate according to Section 403.03.03. It shall be a washed number 8 or 9m aggregate conforming to Section 805.05.

**Equipment** Provide, and keep on the project at all times, an accurate thermometer, hand brooms, and other small tools and equipment essential for completion of the work.

**The asphalt distributor** for the application of the emulsion shall have full circulation spray bar that is adjustable to at least 16 feet wide in 2 feet increments and capable of heating and circulating the emulsion simultaneously, conforming to subsection 406.02.05. It must have computerized rate control for adjusting and controlling the application from the cab within 0.01 gallons per square yard increments. The distributor shall also be equipped with a volume measuring device and a thermometer for measuring the emulsion temperature in the tank.

**The scrub broom** shall be rigid in frame construction and attached to and pulled by the distributor. It shall be light enough so not to squeegee the emulsion off the roadway surface. The leading and trailing broom heads angled at 10 to 15 degrees off the centerline of the supporting member with stiff bristles at minimum height of 5 inches.

**The aggregate spreader** shall be a continuous mechanical feed, self-propelled aggregate spreader with front discharge. Ensure the spreader can evenly distribute the aggregate from the transporting vehicle directly onto the fresh asphalt material in smooth, uniform layers, independent of the forward speed. Ensure that the spreader is capable of being filled and moved without discharging aggregate.

**The roller** shall be a Pneumatic tire roller weighing at least 5 tons.

**The power broom** shall be a mechanically powered kick-broom or vacuum type broom.

## CONSTRUCTION

**Weather Limitations** Application of scrub seal shall only be constructed when ambient temperature is 50 degrees F and rising. Do not construct when the ambient temperature within the preceding 24 hours has been 35 degrees F or lower, except with the Engineer's written permission. Do not proceed with construction if rain is expected in a minimum period of 24 hours, nor when rain is impending within 2 hours after completion of the scrub seal. If an unexpected shower arises during operations, the asphalt distributor should be shut off immediately and placement of aggregate continued until all asphalt has been covered.

**Preparation of Mixture** Submit a complete mix design a minimum of 14 days prior to construction. Mix design shall be prepared by an approved laboratory, to verify the compatibility of the aggregate, asphalt emulsion and other additives. Perform the mix design with the same materials that will be used on the project.

**Surface Preparation** Prior to operation, the contractor shall remove all existing thermoplastic striping, thermoplastic legends, and raised markers within application limits. All surfaces intended for application shall be thoroughly cleaned of all vegetation, loose material, dirt, or other objectionable material immediately before application of emulsion using a mechanical sweeper and wire hand brooms, when necessary. Clean the edges of the surface providing a full and uniformly clean width of roadway. Where mud or earth exists, remove it in advance and allow surface to thoroughly dry before applying emulsion. Mowing or removal of shoulder vegetation and or brush may be necessary for proper application.

If cracks cannot be adequately filled by emulsion, fill with proper asphalt material or hot pour joint sealer conforming to subsection 807.03.01. If applicable, apply cover aggregate before applying scrub seal application.

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### Application Rates of Materials

Properties	Minimum	Maximum
Application rate of emulsion, gallons/sq. yard*	0.22	0.35
Emulsion temperature, F	110	185
Application rate of aggregate, lb./sy*	16	22

\*Engineer may adjust application rates due to existing conditions

### APPLICATION

**Application of Emulsion** Heat and maintain emulsion between 110 and 185 degrees F during application. Polymer modified emulsion shall be applied when air temperature is at least 50 degrees F and rising and a minimum surface temperature of 70 degrees F.

Emulsion shall be applied using a pressure distributor in a uniform, continuous quantity at specified rates. Proper brooming equipment shall follow ensuring all cracks and voids are filled.

Keep the nozzles of the spray bar clean at all times. Immediately make any streaked areas uniform by use of a hand hose equipped with a nozzle.

Do not apply the asphalt material farther in advance of the spreading of the aggregate than can be covered directly by the aggregate immediately available at the site of work.

When the scrub seal treatment is constructed in half-widths, provide complete coverage by overlapping the 2 applications approximately 4 inches along centerline.

Prevent spotting or discoloring curbs, headwalls, and other structures. When such discolorations occur, remove them at no expense to KYTC.

Make joints utilizing an approved method.

**Aggregate** Aggregate cover material shall be cleaned and washed to remove dirt and dust, ensuring appropriate adhesion with emulsion. Due to this process, aggregate may be damp during application. Immediately following scrubbing and prior to breaking of the emulsion, aggregate shall be continuously and evenly spread with the proper equipment at the specified rates. Spreading equipment shall not contact the asphalt material before it is covered with aggregate. Precautions should be taken not to exceed the designated rate by more than 5 percent. Use hand brooms to correct any irregularities.

**Rolling** A self-propelled pneumatic tire roller shall be used for the required rolling of the aggregate. This shall be done immediately following the spreading of aggregate. Operate the rollers parallel to the centerline in a manner preventing the dislodgment of newly applied aggregate. Rolling should proceed from the outer edge to the center, with each pass overlapping the previous by one-half. Cover the entire surface with at least 3 passes or more when the engineer directs.

**Sweeping** Power sweep/vacuum the completed application to remove all excess aggregate after the asphalt material has cured sufficiently. Sweeping/vacuuming must be completed prior to any striping and/or before the end of the application day. Little to no aggregate shall be remaining on entrance/exit aprons of intersecting crossroads and driveways. A second sweeping may be required following the initial application day. Prior to applying a fog seal or other of surface treatment over the scrub seal, it may be opened to traffic for an amount of time specified in the contract. This may be necessary to ensure maximum aggregate retention.

### MEASUREMENT

When an authorized adjustment is made, KYTC will measure quantities up to 5 percent in excess of

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the designated application rate for payment. KYTC will not measure quantities exceeding the designated application rate by more than 5 percent for payment.

**Asphalt Material.** KYTC will measure the quantity in tons according to **Section 109.**

**Aggregate.** KYTC will measure the quantity in tons according to **Section 109.**

## **PAYMENT**

KYTC will make payment for the completed and accepted quantities under the following:

<u>Pay Item</u>	<u>Pay Unit</u>
Polymer Modified Emulsified Asphalt for Scrub Seals	Ton
Crushed Aggregate	Ton

KYTC will consider payment as full compensation for all work required under this section.

## **1.03 – Asphalt Fog Seals**

**DESCRIPTION** Construct an asphalt fog seal consisting of one or more applications of asphalt material.

## **MATERIAL AND EQUIPMENT**

**Asphalt Material** Furnish diluted **CSS1-H** or **SS1-H** emulsion that meets requirements **Section 806.05**

**Equipment.** Provide, and keep on the project at all times, an accurate thermometer, hand brooms, and other small tools and equipment essential for completion of the work.

**The asphalt distributor** for the application of the emulsion shall have full circulation spray bar that is adjustable to at least 16 feet wide in 2 feet increments and capable of heating and circulating the emulsion simultaneously, conforming to subsection 406.02.05. It must have computerized rate control for adjusting and controlling the application from the cab within 0.01 gallons per square yard increments. The distributor shall also be equipped with a volume measuring device and a thermometer for measuring the emulsion temperature in the tank.

## **CONSTRUCTION**

**Weather Limitations** Application of chip seal shall only be constructed when ambient temperature is 50 degrees F and rising. Do not construct when the ambient temperature within the preceding 24 hours has been 35 degrees F or lower, except with the Engineer's written permission. Do not proceed with construction if rain is expected in a minimum period of 24 hours, nor when rain is impending within 2 hours after completion of the fog seal. If an unexpected shower arises during operations, the asphalt distributor should be shut off immediately and placement of aggregate continued until all asphalt has been covered.

**Preparation of Mixture** Submit a complete mix design a minimum of 14 days prior to construction. Mix design shall be prepared by an approved laboratory, to verify the compatibility of the aggregate, asphalt emulsion and other additives. Perform the mix design with the same materials that will be used on the project.

**Surface Preparation** Prior to operation, the contractor shall remove all existing thermoplastic striping, thermoplastic legends, and raised markers within application limits. All surfaces intended for application shall be thoroughly cleaned of all vegetation, loose material, dirt, or other objectionable material immediately before application of emulsion using a mechanical sweeper and wire hand brooms, when necessary. Clean the edges of the surface providing a full and uniformly clean width of roadway. Where mud or earth exists, remove it in advance and allow surface to thoroughly dry before applying emulsion. Mowing or removal of shoulder vegetation and or brush may be necessary for proper application.

If cracks cannot be adequately filled by emulsion, fill with proper asphalt material or hot pour joint sealer conforming to subsection 807.03.01

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### Application Rates of Materials

Properties	Minimum	Maximum
Application rate of emulsion, gallons/sq yard*	0.05	0.16
Emulsion temperature, F	110	185

\*Engineer may adjust application rates due to existing conditions

### APPLICATION

**Application of Emulsion** Heat and maintain emulsion between 110 and 185 degrees F during application. Emulsion shall be applied when air temperature is at least 50 degrees F and rising and a minimum surface temperature of 70 degrees F.

Emulsion shall be applied using a pressure distributor in a uniform, continuous quantity at specified rates.

Keep the nozzles of the spray bar clean at all times. Immediately make any streaked areas uniform by use of a hand hose equipped with a nozzle.

When the fog seal treatment is constructed in half-widths, provide complete coverage by overlapping the 2 applications approximately 4 inches along centerline.

Prevent spotting or discoloring curbs, headwalls, and other structures. When such discolorations occur, remove them at no expense to KYTC.

Make joints utilizing an approved method.

### MEASUREMENT

When an authorized adjustment is made, KYTC will measure quantities up to 5 percent in excess of the designated application rate for payment. KYTC will not measure quantities exceeding the designated application rate by more than 5 percent for payment.

**Asphalt Material** KYTC will measure the quantity in tons according to **Section 109**.

### PAYMENT

KYTC will make payment for the completed and accepted quantities under the following:

<u>Pay Item</u>	<u>Pay Unit</u>
Emulsified Asphalt for Fog Seals	Ton

KYTC will consider payment as full compensation for all work required under this section.

### 1.04 – Traffic Control

Furnish traffic control according to Section 112 and the Manual on Uniform Traffic Control Devices, current edition, at no additional cost to the Department.

The Vendor shall notify the Engineer 48 hours prior to beginning work.

### 1.05 – Sampling and Testing

All materials shall be sampled and tested in accordance with the Department's Sampling Manual and the materials shall be available for sampling a sufficient time in advance of the use of the materials to allow for the necessary time for testing unless otherwise specified in these notes.



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## **1.06 – Delivery**

Project locations and quantities will be furnished to the Vendor through a written Transportation Delivery Order.

Delivery orders may be placed for Fog Seals only, Asphalt Chip Seals only, Asphalt Scrub Seals only, or a combination of those types of work.

The minimum value for a Delivery Order for Fog Seals only will be \$15,000. The minimum value for all other Delivery Orders will be \$40,000. The minimum value may be adjusted if mutually agreed upon by the Engineer and the Vendor. Mobilizations and Demobilization shall be incidental.

## **1.07 Insurance**

Evidence will be furnished to the Transportation Cabinet Division of Purchases each year that public liability (General Liability) insurance is carried on the above equipment and their operators in the following amounts:

Property \$1,000,000.00

Personal \$1,000,000.00

And Kentucky worker's compensation insurance in accordance with the requirements of KRS 45A.480 and KRS Chapter 342.

Vendor must submit an ACORD Certificate (or equivalent) with the certificate holder listed as:

KYTC  
Division of Purchases  
200 Mero St, 4<sup>th</sup> Floor  
Frankfort, KY 40622

## **Section 2—Terms and Conditions of the Master Agreement**

### **2.00—Scope of the Contract**

The KYTC Division of Purchases issues this Master Agreement for:

**Asphalt Chip Seals, Asphalt Scrub Seals, and Asphalt Fog Seals**

### **2.01—Contract Components and Order of Precedence**

The Commonwealth's acceptance of the offer indicated by the issuance of an Award by the KYTC Division of Purchases shall create a valid Master Agreement consisting of the following:

1. The written Master Agreement between the Parties;
2. Any Addenda to the Solicitation;

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3. Any provisions of the Solicitation and all attachments thereto;
  4. The Bidder's response to the Solicitation, and
  5. The Kentucky Revised Statutes KRS 45A.

In the event of an inconsistency between provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Specifications; (b) other provisions of the Solicitation, whether incorporated by reference or otherwise; (c) Contract or Master Agreement Terms and Conditions; (d) FAP 110-10-00 – General Conditions and Instructions for Solicitations and Contracts.

## **2.02—Initial Contract Period**

The Master Agreement(s) for all districts will be effective upon award and will expire May 31, 2017.

## **2.03—Optional Renewal Period**

This Master Agreement may be extended at the completion of the initial contract period for 4 additional one-year periods. This extension must have the written approval of the vendor and the KYTC Division of Purchases. The Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

## **2.04—Divisions/Agencies to Be Served**

This contract shall be for use by the following Divisions/Agencies of the Kentucky Transportation Cabinet:

### **Division of Maintenance and Highways Districts**

No shipments or services are authorized until an official Delivery Order has been fully processed by an authorized agency.

## **2.05—Quantity Basis of Contract**

This Master Agreement has no guarantee of any specific quantity, and the State is obligated only to buy that quantity which is needed by its agencies.

## **2.06—Exception to Required Use of Contract**

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to acquire large requirements through other competitive processes.

## **2.07—Basis of Price Revisions**

**PRICE ADJUSTMENTS:** Unless otherwise specified, the prices established by the Master Agreement shall be firm for the contract period subject to the following:

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- A. Price Increases: A price increase will not be allowed during the first six (6) months of the contract. Only one price increase will be allowed during the contract period. The price increase must be based on industry wide price changes. The contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The KYTC Division of Purchases may request additional information or justification. If the price increase is denied, the contract holder may withdraw from the contract without prejudice upon written notice and approval by the KYTC Division of Purchases. Notice of withdrawal must be provided a minimum of forty-five (45) days prior to the effective date.
- B. Price Decreases: The contract price shall be reduced to reflect any industry wide price decreases. The contract holder is required to furnish the KYTC Division of Purchases with notice of any price decreases as soon as such decreases are available.
- C. Extended Contract Periods: If the contract provides for an optional renewal period, a price adjustment may be granted at the time the contract is renewed, subject to price increase justification as required "A. Price Increases". One (1) additional price increase may be granted during the extended contract period. This price increase will not be allowed during the first six (6) months of the extended contract period and will be subject to the conditions in "A" above.

## **2.08—Addition or Deletion of Items or Services**

The KYTC Division of Purchases reserves the right to add new and similar items, with the consent of the vendor, to the contract. If an addition is agreeable to both parties, the KYTC Division of Purchases will issue a Modification. Until such time as the vendor receives a Modification, the vendor shall not accept Delivery Orders from any agency referencing such items or services.

## **2.09—Changes and Modifications to the Contract**

During the period of the contract, a modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from the KYTC Division of Purchases. If the contractor finds at any time that existing conditions make modification in requirements necessary, the contractor shall report the matter promptly to the KYTC Division of Purchases for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

## **2.10— Reduction in Contract Worker Hours/Employee Furlough**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document. The reduction of hours may be applicable to those contract workers that provide a service in state government buildings on a regularly scheduled basis, such as janitorial, security guard, mailing services, and food services. These services will be reduced in hours only in those circumstances where the buildings will be closed. A notification will be sent to the contract holder in advance of any scheduled reduction in contract hours.

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## 2.11-Equipment

All equipment must be new and current model(s). The Commonwealth recognizes the rapid advancement of technology. If the vendor can provide new equipment of advanced technology after the award of the contract, the Commonwealth and the bidder may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award contract.

## 2.12—Basis of Shipment

All shipments shall be F.O.B. Destination to the receiving agency. The vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency. The responsibility for filing freight claims lies with the vendor.

## 2.13—Notices

The Division of Purchases Buyer identified below shall be the sole point of contact throughout the procurement process. All communications, oral and written (regular, express, or electronic mail) concerning this procurement shall be submitted to:

TJ Gilpin  
KYTC Division of Maintenance  
Phone: 502-782-5582  
Email: [Thomas.Gilpin@ky.gov](mailto:Thomas.Gilpin@ky.gov)

With a copy to:

Amanda Lewis  
Division of Purchases  
Kentucky Transportation Cabinet  
Phone: 502-782-4003  
E-mail: [Amanda.Lewis2@ky.gov](mailto:Amanda.Lewis2@ky.gov)

From the issue date of this solicitation until a Contractor(s) is selected and the selection is announced, Offerors are not permitted to communicate with any Commonwealth staff concerning this solicitation

After the award of a contract, all programmatic communications are to be made to the Agency Contact Person identified in the contract document with a copy to the Division of Purchases Buyer.

After the Award of a contract, all communications of a contractual or legal nature are to be made to the KYTC Division of Purchases Buyer.

## 2.14—Deliveries

Response at the earliest possible date is desired.

**Vendor guarantees response time within 21 calendar days after receipt of Delivery Order from District personnel.**

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The Vendor agrees to treat the Department as a preferred and priority customer. Failure to do so may be cause for Contract cancellation, removal from the bid list, or both.

The Vendor agrees that when delivery is not made within the contracted due date, one percent (1%) per day shall be deducted from the Vendor's invoice for each day the Vendor fails to meet the contracted delivery date.

## **2.15—Inspection**

All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the vendor's expense.

## **2.16—Invoices**

Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

- a. Contract and order number;
- b. Item numbers;
- c. Description of supplies or services;
- d. Sizes;
- e. Quantities
- f. Unit prices; and
- g. Extended totals.

## **2.17—Payments**

A bill shall be paid within 30 working days of either the receipt of correct invoice, or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

## **2.18—Post Contract Agreements**

The Master Agreement shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this contract. The Commonwealth shall not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the

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terms of the contract. Any such documents so obtained will be non-binding on the State and be cause for breach of contract.

#### 2.19—Subcontracts

The vendor shall notify the Commonwealth of any planned use of subcontractors in regards to the resulting contract. If the KYTC Division of Purchases is provided evidence of the vendor making such an arrangement without submitting the proper information prior to use of the subcontractor, the contract may be cancelled immediately.

This provision will not be taken as requiring the approval of contracts of employment between the vendor and their personnel.

All payments will be made directly to the contracted vendor. It is the vendor's responsibility to make payment to the subcontract. Payments shall not be made to the subcontractor by the Commonwealth. Subcontractors having nonpayment issues that could not be resolved with the Vendor, should report in detail these incidents to the buyer of record for this solicitation.

The Vendor shall ensure that all contractors or subcontractors comply with all applicable Federal, State, and Local laws, regulation, mandates, and terms of this solicitation and resulting contract.

Additionally, the Vendor shall not contract with any contractor or subcontractor that utilizes the services of illegal immigrants. Attached is the required affidavit regarding contractor or subcontractor employees.

The vendor is responsible for supplying the subcontractor with a copy of any applicable prevailing wage rates and the terms and conditions of the solicitation.

#### 2.20-Service Performance

All services performed under contract shall be in accordance with the terms and conditions of the contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

Deviations of services performed will not be made without the written approval of the KYTC Division of Purchases. Problems that arise under any aspect of performance should first be resolved between the vendor and the agency. If such problems and/or disagreements cannot be resolved they should be referred to the KYTC Division of Purchases for mediation.

#### 2.21—Assignment

The vendor shall not assign this Master Agreement in whole or in part to another vendor at any time during the initial or optional renewal terms of the contract, without the consent, guidance and approval of the Commonwealth. Any assignment hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Any purported

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assignment without this consent shall be null and void.

## **2.22—Termination of Contracts**

A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

## **2.23— Endorsements**

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

## **2.24-Registration with the Secretary of State by a Foreign Entity**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth (“certificate”) from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity’s solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

## **2.25—EEO ACT**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act, if applicable.

1. Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.
2. Vendors/Contractors must submit the following documents in accordance with the requirements of the solicitation—EEO-1: Employer Information Report, Affidavit of Intent to Comply and Subcontractor Report or a copy of the Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.
3. Vendors/Contractors may obtain copies of the required EEO documents from the Finance and Administration Cabinet’s e-Procurement Web page under Finance Forms at the heading Procurement at the following address:  
<http://finance.ky.gov/SERVICES/FORMS/Pages/default.aspx>

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4. Vendors/Contractors must advise each subcontractor/subvendor—with a subcontract of more than \$500,000—of the subcontractor's obligation to comply with the KY EEO Act. Further, Vendors/Contractors are responsible for compiling EEO documentation from their subcontractors/subvendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance. (Note: contracts below the second tier are exempt from EEO reporting.)
5. Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. Further, alternate versions of the required documents will not be accepted or processed.
6. Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and/or documentation and to conduct on-site monitoring reviews of project sites and/or business facilities at any point for the duration of any contract which exceeds \$500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.
7. All questions regarding EEO forms or contract compliance issues must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: [Finance.ContractCompliance@ky.gov](mailto:Finance.ContractCompliance@ky.gov) or via telephone: (502) 564-2874.

## 2.26-Discrimination

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union



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or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **2.27—Prevailing Wage**

**Prevailing Wage Rates do apply to this contract. Rates are attached.**

If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

## **2.28—Kentucky Sales and Use Taxes**

Sales of tangible personal property or services to the State of Kentucky and its agencies are not subject to state sales or use taxes.

## **2.29—Extension Period**

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This contract may be extended at the termination of all contract renewal periods for additional time not to exceed **90 days**. This extension must be accompanied by the written approval of the vendor and the Division of Purchases

### **2.30—Extending Master Agreement to Other Agencies**

The Division of Purchases reserves the right, with the consent of the vendor, to offer this master agreement to other state agencies or political subdivisions who may have need for the product (s).

### **2.31-Access to Records**

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1) (c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.